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ENDORSED
FILED
San Francisco County Superior Court

NOV 19 2003

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GORDON PARK-LI, Clerk
BY: LINDA K. ESPY
Deputy Clerk

8 Attorneys for Plaintiff
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO
15 (Unlimited Jurisdiction)

16 MATEEL ENVIRONMENTAL JUSTICE)
17 FOUNDATION,)

CASE No. 416304

18 PLAINTIFF,

CONSENT JUDGMENT

19 v.

20 LIBERTY GLOVE, INC. ET AL.,

21 DEFENDANT.
22

23
24 1. INTRODUCTION

25 1.0 On January 9, 2003 the MATEEL ENVIRONMENTAL JUSTICE
26 FOUNDATION ("Plaintiff MEJF") acting on behalf of itself and the general public, filed
27 a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco
28 Superior Court, Case No. 416304, against defendant LIBERTY GLOVE, INC.

1 (hereinafter referred to as "Liberty Glove" or "Defendant") The Complaint alleges,
2 among other things, that Defendant violated provisions of the Safe Drinking Water and
3 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*
4 (Proposition 65), and Business and Professions Code Sections 17200 *et seq.* (the "Unfair
5 Competition Act"), by knowingly and intentionally exposing persons to products
6 containing lead and/or lead compounds, which are chemicals known to the State of
7 California to cause cancer and/or birth defects or other reproductive harm, without first
8 providing a clear and reasonable warning to such individuals. The Complaint was based
9 upon a 60-Day Notice letter, dated October 2, 2002, sent by MEJF to Liberty Glove, the
10 California Attorney General, all District Attorneys, and all City Attorneys with
11 populations exceeding 750,000.

12 1.1 Defendant is a business that employs more than ten persons and
13 manufactures, distributes and/or markets within the State of California clothing made
14 from lead-containing polyvinyl chloride "PVC" materials. Pursuant to Health and Safety
15 Code Section 25249.9, lead and lead compounds are chemicals known to the State of
16 California to cause cancer and reproductive toxicity. Products containing lead and/or
17 lead compounds that are sold or distributed in the State of California are, under specified
18 circumstances, subject to the Proposition 65 warning requirement set forth in Health and
19 Safety Code Section 25249.6. Plaintiff MEJF alleges that clothing made from lead-
20 containing PVC materials (hereinafter "PVC clothing"), that is manufactured, distributed,
21 sold and/or marketed by Defendant for use in California, requires a warning under
22 Proposition 65. For purposes of this Consent Judgment, the term "Covered Products"
23 shall be defined as PVC clothing that is: 1) distributed and sold within the State of
24 California, and 2) Manufactured by Liberty Glove or any other entity acting on its behalf,
25 and distributed, marketed and/or sold by Liberty Glove or by any other entity that
26 distributes, markets or sells Liberty Glove brand PVC clothing, or manufactured by any
27 other entity for Liberty Glove, whether or not the clothing bears Liberty Glove labels.
28

1.2 For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Settling Defendant Liberty Glove as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

1.3 This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which Settling Defendant Liberty Glove denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendants.

2. SETTLEMENT PAYMENT

2.0 In settlement of all of the claims referred to in this Consent Judgment against the Settling Defendant, within 30 days of the entry of this Consent Judgment, Liberty Glove shall pay \$16,000 to the Klamath Environmental Law Center ("KELC") to cover plaintiffs' attorneys' fees. Additionally, within 30 days of the entry of this Consent Judgment, Liberty Glove shall pay \$16,500 to Center for Environmental Health for use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and community awareness of health hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the charitable contributions made pursuant to this section shall not be construed as a credit against the personal claims of absent third parties for restitution against the defendant.

1 Glove and the Released Entities, and all of their respective parents, subsidiaries or
2 affiliates, and all of their customers, distributors, wholesalers, retailers, or any other
3 person in the course of doing business, and the successors and assigns of any of them,
4 who may use, maintain, distribute or sell the Covered Products, whether under
5 Proposition 65 or the Unfair Competition Act or otherwise, arising out of or resulting
6 from, or related directly or indirectly to, in whole or in part, the Covered Products,
7 including but not limited to any exposure to, or failure to warn with respect to, the
8 Covered Products (referred to collectively in this paragraph as the "Claims"). In
9 furtherance of the foregoing, as to alleged exposures to Covered Products, Plaintiff MEJF
10 hereby waives any and all rights and benefits which it now has, or in the future may have,
11 conferred upon it with respect to the Claims by virtue of the provisions of Section 1542
12 of the California Civil Code, which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO
14 CLAIMS WHICH THE CREDITOR DOES NOT KNOW
15 OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME
16 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

17 Plaintiff MEJF understands and acknowledges that the significance and consequence of
18 this waiver of California Civil Code Section 1542 is that even if Plaintiff MEJF suffers
19 future damages arising out of or resulting from, or related directly or indirectly to, in
20 whole or in part, the Covered Products, including but not limited to any exposure to, or
21 failure to warn with respect to exposure to, the Covered Products, Plaintiff MEJF will not
22 be able to make any claim for those damages against Liberty Glove or the Released
23 Entities. Furthermore, Plaintiff MEJF acknowledges that it intends these consequences
24 for any such Claims as may exist as of the date of this release but which Plaintiff MEJF
25 does not know exist, and which, if known, would materially affect their decision to enter
26 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
27 ignorance, oversight, error, negligence, or any other cause.

28

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.0 The terms of this Consent Judgment shall be enforced exclusively by the
3 parties hereto. The parties may, by noticed motion or order to show cause before the
4 Superior Court of San Francisco County, giving the notice required by law, enforce the
5 terms and conditions contained herein. In any proceeding brought by either party to
6 enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
7 remedies as may be provided by law for any violation of Proposition 65 or this Consent
8 Judgment. Additionally, if in such a proceeding the Court finds that Liberty Glove failed
9 to comply with the reformulation requirements specified in Section 7 of this Consent
10 Judgment, and notwithstanding any other provision of this Consent Judgment, then as to
11 Covered Products for which reformulation has not been accomplished pursuant to Section
12 7 of this Consent Judgment, and only as to such Covered Products, Liberty Glove shall
13 not benefit from any release from liability specified in any provision of this Consent
14 Judgment.

15 **6. MODIFICATION OF JUDGMENT**

16 6.0 This Consent Judgment may be modified only upon written agreement of
17 the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
18 motion of any party as provided by law and upon entry of a modified Consent Judgment
19 by the Court.

20 **7. INJUNCTIVE RELIEF - REFORMULATION**

21 7.0 By December 1, 2003, the PVC used in the production of Covered Products
22 imported or sold by Liberty Glove for sale into California shall meet the following
23 criteria:

- 24 (a) The PVC shall have no lead as an intentionally added constituent;
25 (b) A representative sample of the bulk PVC used to manufacture the
26 Covered Products shall have been tested for lead, and must have shown lead content by
27 weight of less than 0.003% (30 parts per million "30 ppm"), using a test method of
28 sufficient sensitivity to establish a limit of quantification (as distinguished from

1 detection) of less than 30 ppm.

2 (c) Liberty Glove may comply with the above requirements by relying
3 on information obtained from its suppliers of the Covered Products, and the PVC utilized
4 in their manufacture, so long as such reliance is in good faith. Demonstration of good
5 faith reliance may include, but is not limited to, e-mails or other written correspondence
6 from suppliers attesting to compliance with the provisions of this Section 7.0.

7 7.1 By October 1, 2004, the PVC in all Covered Products distributed or sold by
8 Liberty Glove for sale into California shall meet the following criteria:

9 (a) The PVC shall have no lead as an intentionally added constituent;

10 (b) A representative sample of the bulk PVC used to manufacture the
11 Covered Products shall have been tested for lead, and must have shown lead content by
12 weight of less than 0.003% (30 parts per million "30 ppm"), using a test method of
13 sufficient sensitivity to establish a limit of quantification (as distinguished from
14 detection) of less than 30 ppm.

15 (c) Liberty Glove may comply with the above requirements by relying
16 on information obtained from its suppliers of the Covered Products, and the PVC utilized
17 in their manufacture, so long as such reliance is in good faith. Demonstration of good
18 faith reliance may include, but is not limited to, e-mails or other written correspondence
19 from suppliers attesting to compliance with the provisions of this Section 7.1.

20 7.2 In the event that MEJF settles another actual or potential claim concerning
21 the alleged failure of a business to provide adequate Proposition 65 warnings concerning
22 its manufacture, distribution or sale of PVC clothing in California, and agrees to a
23 standard for reformulation that allows for lead content by weight of greater than 30 ppm
24 in the PVC materials, Liberty Glove's compliance with the less stringent standard will be
25 deemed to meet the requirements of Sections 7.0 (b) and 7.1(b) above. MEJF shall notify
26 Liberty Glove of any and each such settlement by written notice pursuant to Section 14,
27 within ten (10) days of execution of such settlement or consent judgment.
28

1 **8. AUTHORITY TO STIPULATE**

2 8.0 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the party he or she represents to enter into this Consent Judgment and to
4 execute it on behalf of the party represented and legally to bind that party.

5 **9. RETENTION OF JURISDICTION**

6 9.0 This Court shall retain jurisdiction of this matter to implement the Consent
7 Judgment.

8 **10. SERVICE ON THE ATTORNEY GENERAL**

9 10.0 KELC shall serve a copy of this Consent Judgment, signed by both parties,
10 on the California Attorney General on behalf of the parties so that the Attorney General
11 may review this Consent Judgment prior to its submittal to the Court for approval. No
12 sooner than forty five (45) days after the Attorney General has received the
13 aforementioned copy of this Consent Judgment, and in the absence of any written
14 objection by the Attorney General to the terms of this Consent Judgment, the parties may
15 then submit it to the Court for approval.

16 **11. ENTIRE AGREEMENT**

17 11.0 This Consent Judgment contains the sole and entire agreement and
18 understanding of the parties with respect to the entire subject matter hereof, and any and
19 all prior discussions, negotiations, commitment and understandings related hereto. No
20 representations, oral or otherwise, express or implied, other than those contained herein
21 have been made by any party hereto. No other agreements not specifically referred to
22 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

23 **12. GOVERNING LAW**

24 12.0 The validity, construction and performance of this Consent Judgment shall
25 be governed by the laws of the State of California, without reference to any conflicts of
26 law provisions of California law.

100 Page 001 To-NEUFELD JAFFE, LLP

From- 02:56pm 10-01-2003 Received

10-01-2003 02:56pm From-NEUFELD JAFFE, LLP

213 533 4140

T-987 P.013/013 F-849

1 **13. COURT APPROVAL**

2 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it
 3 shall be of no force or effect, and cannot be used in any proceeding for any purpose.

4 **14. NOTICES**

5 14.0 Any notices under this Consent Judgment shall be by personal delivery of
 6 First Class Mail.

7 If to MEJF:

William Verick
 Klamath Environmental Law Center
 424 First Street
 Eureka, CA 95501

10 If to Liberty Glove:

Luisa Jaffe
 Neufeld Jaffe, LLP
 555 West 5th Street, 30th Floor
 Los Angeles, CA 90013

12 **IT IS SO STIPULATED:**13 DATED: 10-6-03

MATEEL ENVIRONMENTAL JUSTICE
 FOUNDATION

16 BY: William Verick
 17 WILLIAM VERICK

18 DATED: October 1, 2003

LIBERTY GLOVE, INC.

21 BY: Sonia Heh
 22 ITS: SONIA HEH, CHIEF FINANCIAL OFFICER

23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**24 DATED: 11/19/03

25 CHARLES MITCHELL
 26 JUDGE OF THE SUPERIOR COURT

28
 9
 CONSENT JUDGMENT

REPORT OF SETTLEMENT

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Mateel Environmental Justice Foundation			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Liberty Glove, Inc.			
CASE INFO	COURT DOCKET NUMBER 416304		COURT NAME San Francisco Superior	
	SHORT CASE NAME Mateel v. Liberty Glove			
REPORT INFO	INJUNCTIVE RELIEF Reformulation of PVC rain wear products to remove lead			
	PAYMENT: CIVIL PENALTY none		PAYMENT: ATTORNEYS FEES \$16,000	PAYMENT: OTHER \$16,500
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED 10/06/2003
	COPY OF SETTLEMENT MUST BE ATTACHED			For Internal Use Only
FILER INFO	NAME OF CONTACT Fredric Evenson			
	ORGANIZATION Law Office of Fredric Evenson		TELEPHONE NUMBER ((707)) 266-8900	
	ADDRESS 424 First Street		FAX NUMBER ((707)) 268-8901	
	CITY Eureka	STATE CA	ZIP 95501	E-MAIL ADDRESS ecorights@earthlink.net

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.